

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

DEC 23 2019

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

KENYATTA QUINN MITCHELL,

No. 19-55108

Petitioner-Appellant,

D.C. No. 3:18-cv-00697-WQH-BLM  
Southern District of California,  
San Diego

v.

ORDER

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION, Director; XAVIER  
BECCERA,

Respondents-Appellees.

Before: TALLMAN and NGUYEN, Circuit Judges.

The request for a certificate of appealability is denied because appellant has not made a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003).

Any pending motions are denied as moot.

**DENIED.**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

KENYATTA QUINN  
MITCHELL,

Petitioner,

v.

DIRECTOR OF THE  
CALIFORNIA DEPARTMENT  
OF CORRECTIONS AND  
REHABILITATION, et al. ,

Respondents.

Case No.: 18cv697-WQH-BLM

**ORDER**

HAYES, Judge:

The matters before the Court are the review of the Report and Recommendation (ECF No. 28) issued by the United States Magistrate Judge and the Motion for Appointment of Counsel filed by Petitioner (ECF No. 27).

**I. BACKGROUND**

On September 28, 2018, the United States Magistrate Judge issued the Report and Recommendation concluding that the Petitioner was not entitled to relief on any grounds set forth in the Petition for Writ of Habeas Corpus and recommending that this court direct judgment be entered denying the Petition. (ECF No. 28).

1 On October 15, 2018, Petitioner filed objections to the Report and Recommendation.  
2 (ECF No. 29).

## 3 II. LEGAL STANDARD

4 The duties of the district court in connection with a report and recommendation of a  
5 magistrate judge are set forth in Federal Rule of Civil Procedure 72(b) and 28 U.S.C. §  
6 636(b). The district judge must “make a de novo determination of those portions of the  
7 report . . . to which objection is made,” and “may accept, reject, or modify, in whole or in  
8 part, the findings or recommendations made by the magistrate.” 28 U.S.C. § 636(b).

## 9 III. RULING OF THE COURT

10 After conducting a de novo review of the Report and Recommendation and  
11 considering the entire file, including Petitioner’s objections, the Court finds that the Report  
12 and Recommendation correctly determined that the Petition for Writ of Habeas Corpus  
13 should be denied. The Court adopts the Report and Recommendation in its entirety.

14 A certificate of appealability must be obtained by a petitioner in order to pursue an  
15 appeal from a final order in a § 2254 habeas corpus proceeding. *See* 28 U.S.C. §  
16 2253(c)(1)(A); Fed R. App. P. 22(b). Pursuant to Rule 11 of the Federal Rules Governing  
17 Section 2254 Cases, “[t]he district court must issue or deny a certificate of appealability  
18 when it enters a final order adverse to the applicant.”

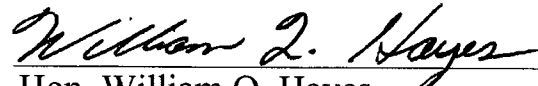
19 A certificate of appealability should be issued only where the petition presents “a  
20 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). It must  
21 appear that reasonable jurists could find the district court’s assessment of the petitioner’s  
22 constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).  
23 The Court does not find that Petitioner has made a sufficient showing to warrant a  
24 certificate of appealability under 28 U.S.C. § 2253(c)(2). The Court declines to grant a  
25 certificate of appealability.

## 26 IV. CONCLUSION

27 IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 28) is  
28 adopted in its entirety and the Petition for Writ of Habeas Corpus (ECF No. 1) is DENIED.

1 A certificate of appealability is DENIED. IT IS FURTHER ORDERED that Petitioner's  
2 Motion for Appointment of Counsel (ECF No. 27) is DENIED. The Clerk of the Court  
3 shall enter judgment for Respondent and against Petitioner and close the case.

4 Dated: January 10, 2019

  
5 Hon. William Q. Hayes  
6 United States District Court  
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